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 Governmental Purchaser Class Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

In re DYNAMIC RANDOM ACCESS
 MEMORY (DRAM) ANTITRUST
 LITIGATION

Master File No. M-02-1486-PJH

MDL No. 1486

This document relates to:

**ALL INDIRECT PURCHASER
 ACTIONS**

and

*State of California et. al. v. Infineon
 Technologies AG, et. al.*

and

*State of New York v. Micron Technology,
 Inc., et al.*

Case No. C 06-4333 PJH
 Case No. C 06-6436 PJH

**STIPULATION AND [PROPOSED]
 SUPPLEMENTAL ORDER RE: (1)
 APPOINTMENT OF HON. CHARLES B.
 RENFREW AS SPECIAL MASTER; AND
 (2) TREATMENT OF THE
 SETTLEMENT FUNDS AS QUALIFIED
 SETTLEMENT FUNDS UNDER
 TREASURY REGULATIONS**

Judge: Honorable Phyllis J. Hamilton

STIPULATION AND [PROPOSED] ORDER APPOINTING THE HONORABLE
 CHARLES B. RENFREW AS SPECIAL MASTER

STIPULATION AND [PROPOSED] ORDER

WHEREAS, pursuant to the Court's November 15, 2007 Order and Federal Rule of Civil Procedure 53, the Indirect Purchaser Plaintiffs, the Governmental Purchaser Plaintiffs, and Attorneys General (collectively "Plaintiffs"), Defendants Samsung Semiconductor, Inc. and Samsung Electronics Company, Ltd. ("Samsung") and Defendants Winbond Electronics Corporation and Winbond Electronics Corporation America ("Winbond") entered into a Stipulation and [Proposed] Order on November 28, 2007; and

WHEREAS, on November 30, 2007, the Court signed the proposed Stipulation and Order submitted by Plaintiffs, Samsung and Winbond, appointing the Honorable Charles B. Renfrew, United States District Court Judge (Retired), as Special Master in these proceedings pursuant to Federal Rule of Civil Procedure 53(a)(1)(A), and charging him with the duty of preparing a report and issuing recommendations on the subjects of: (1) the plan of allocation of settlement proceeds for the benefit of members of the Private Indirect Purchaser Settlement Class and the Government Purchaser Settlement Class, and (2) the development of form(s) of notice for the Classes (Dkt. # 1787); and

WHEREAS, also on November 30, 2007, this Court entered an Order Modifying Stipulation and Order Appointing Special Master, in which the Court broadened the reference to Judge Renfrew to include the duty of preparing a report and issuing recommendations on the subject of whether, in light of the guidance of the Manual for Complex Litigation, Fourth, § 21.23, certification of the proposed settlement classes, including the creation of subclasses, is appropriate (Dkt. # 1789); and

WHEREAS, Plaintiffs have entered into a separate settlement agreement with Defendants Infineon Technologies AG and Infineon Technologies North America Corp. ("Infineon"), Elpida Memory, Inc. and Elpida Memory (USA) Inc. ("Elpida"), NEC Electronics America, Inc., presently known as Renesas Electronics America Inc. ("NEC"), Mosel Vitelic Corp. and Mosel Vitelic, Inc. ("Mosel"), Micron Technology, Inc. and Micron

STIPULATION AND [PROPOSED] ORDER APPOINTING THE HONORABLE
CHARLES B. RENFREW AS SPECIAL MASTER

Semiconductor Products, Inc. ("Micron"), and Hynix Semiconductor Inc. and Hynix Semiconductor America Inc. ("Hynix") (collectively, the "Settling Defendants"); and

WHEREAS, the settlement agreement between the Plaintiffs and the Settling Defendants, as well as the settlement agreements entered into previously between the Plaintiffs and Samsung and the Plaintiffs and Winbond, all contemplate the establishment of one or more "Escrow Accounts," each intended to qualify as a "qualified settlement fund" within the meaning of section 1.468B-1, et. seq. of the Treasury Regulations promulgated under section 468B of the Internal Revenue Code; and

THEREFORE, the Plaintiffs and the Settling Defendants hereby stipulate to the following proposed Order:

1. The Honorable Charles B. Renfrew, United States District Court Judge (Retired), previously appointed as Special Master in these proceedings pursuant to Federal Rule of Civil Procedure 53(a)(1)(A), shall have the authority granted by Rule 53(c), Federal Rules of Civil Procedure, as to Plaintiffs' proposed settlement with the Settling Defendants.¹

2. The Special Master's duties shall be supplemented and modified to also include assisting the Plaintiffs, the Settling Defendants and the Court by preparing a report and issuing recommendations on the following subjects in connection with Plaintiffs' proposed settlement with the Settling Defendants:

- a. The development of a plan of allocation of settlement proceeds for the benefit of members of the Private Indirect Purchaser Settlement Class and the Government Purchaser Settlement Class, including the consideration and/or addition of any subclasses or other means of ensuring a fair and equitable allocation;

¹ The Special Master's authority shall include the authority to appoint counsel to represent the interests of any portion of the Settlement Class if he, in his discretion, determines that would be helpful.

- b. The development of a proposed form of notice, and methods to disseminate that notice, in order to adequately apprise settlement class members of the proposed settlements; and
- c. In connection with the above duties, and taking into consideration the guidance provided by the Manual for Complex Litigation, Fourth, § 21.23, whether ultimate certification of the classes is appropriate; and
- d. The appropriate amount of fees and reimbursement of costs to be awarded to Plaintiffs and the appropriate amount of incentive awards to be awarded to class representatives pursuant to Section 29 of the settlement agreement between Plaintiffs and the Settling Defendants.

3. The Special Master shall proceed in the performance of these duties, which may be combined with the performance of the duties for which he was previously appointed, with all reasonable diligence and shall file his report and recommendations with the Court and serve the report on the parties on or before a date to be specified in future orders of the Court. In all respects this Court's Orders of November 30, 2007 shall remain in full force and effect.

4. The Special Master shall maintain and preserve any written order, report or recommendation the Special Master may make pursuant to this Stipulation and Order until this matter is finally resolved. The Special Master may designate formal briefs, information submissions, or any other materials as materials to be preserved and filed as the record of the master's activities and shall file such record with the Court in electronic format pursuant to future order of the Court. In order to facilitate the fair and effective performance of the duties set forth in Paragraph 3 above, the Special Master may communicate *ex parte* with the Court, counsel and the settling parties. The Special Master may review confidential documents and other information that is subject to the Protective Order issued in these actions as a court officer and shall be bound by the terms of the Protective Order.

1 5. Except as ordered by the Special Master, all papers submitted to the Special
2 Master in connection with any hearing to be held by him shall be served upon counsel for
3 Plaintiffs and the Settling Defendants at least five (5) court days before any hearing;
4 responses shall be filed and served at least two (2) court days before any hearing; and reply
5 briefs shall be filed and served at least one (1) court day before the hearing.

6 6. The Special Master's fee shall be computed by multiplying the hours incurred
7 by him by his normal and customary hourly rate and all expenses shall be reasonably
8 incurred and shall be billed at the Special Master's actual out-of-pocket cost. All payments
9 to the Special Master shall be made from the settlement funds and be allocated pursuant to
10 the agreement of the parties or by order of the Court upon the recommendation of the Special
11 Master.

12 7. The parties and the Court have reviewed the Declaration executed by Judge
13 Renfrew, attached as Exhibit 1, to the November 30, 2007, Stipulation and Order (Dkt.
14 #1787), pursuant to Rule 53(b)(3), Federal Rules of Civil Procedure and 28 U.S.C. 455.

15 8. Pursuant to Rule 53(g)(1), Federal Rules of Civil Procedure, the Court may
16 adopt, affirm, modify, wholly or partly reject, or resubmit to the Special Master with
17 instructions any order, report, or recommendation submitted by the Special Master. All
18 objections to findings of fact and all conclusions of law made or recommended by the
19 Special Master shall be reviewed by the Court *de novo* unless otherwise ordered by the
20 Court.

21 9. The Escrow Accounts created pursuant to each and all of the settlement
22 agreements referenced above shall be administered under the continuing supervision of this
23 Court, and shall be treated, administered, maintained, managed and operated at all times as
24 qualified settlement funds within the meaning of Treas. Reg. Section 1.468B-1 through
25 mechanisms that provide for the Escrow Agents to make such elections as are necessary or
26 advisable to treat the Escrow Accounts as such, including the "relation-back election" (as

1 defined in Treas. Reg. Section 1.468B-1) back to the earliest permitted date, and to make
2 reasonable assurance that the Escrow Accounts will be in a financial position to pay all
3 claims in strict compliance with the terms of the settlement agreements and as directed by the
4 Court. This order shall be effective *nunc pro tunc* to the date(s) of lodging of each of the
5 settlement agreements.

6 This Stipulation and Proposed Order is respectfully submitted this 22nd day of
7 November, 2010 by the following counsel for the Plaintiffs and the Settling Defendants.

8 COOPER & KIRKHAM, P.C.

9
10 By: _____ /s/
11 Josef D. Cooper
12 Co-Lead Counsel for
13 Indirect Purchaser Plaintiffs

14
15 By: _____ /s/
16 Emilio E. Varanini
17 Liaison Counsel On Behalf of All Attorneys General
and All Governmental Purchaser Class Plaintiffs

18 By: _____ /s/
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25 Counsel for Defendants Micron Technology, Inc. and
26 Micron Semiconductor Products, Inc.

27 STIPULATION AND [PROPOSED] ORDER APPOINTING THE HONORABLE
28 CHARLES B. RENFREW AS SPECIAL MASTER

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Counsel for Infineon Technologies AG and Infineon
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Counsel for Defendant NEC Electronics America, Inc.
presently known as Renesas Electronics America Inc.

1 By: _____/s/_____
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3 Counsel for Defendants Mosel Vitelic Corp. and Mosel
4 Vitelic, Inc.

5 By: _____/s/_____
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14 By: _____/s/_____
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21 Counsel for Defendants Winbond Electronics
22 Corporation and Winbond Electronics Corporation
23 America

24 **ATTESTATION OF FILING**

25 Pursuant to General Order No. 45§ X(B), I hereby attest that I have obtained
26 concurrence in the service and filing of this Stipulation with electronic signatures from all
27 counsel of the parties listed above.

28 DATED: November 22, 2010

COOPER & KIRKHAM, P.C.

By: _____/s/_____
Josef D. Cooper

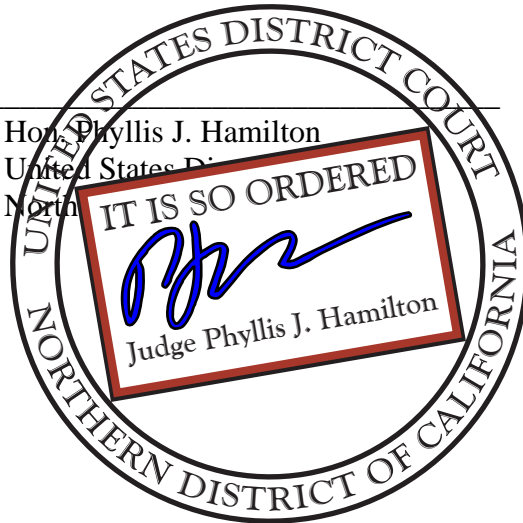
STIPULATION AND [PROPOSED] ORDER APPOINTING THE HONORABLE
CHARLES B. RENFREW AS SPECIAL MASTER

ORDER

It is SO ORDERED.

11/29/10

Hon. Phyllis J. Hamilton
United States District Court
Northern District of California



STIPULATION AND [PROPOSED] ORDER APPOINTING THE HONORABLE
CHARLES B. RENFREW AS SPECIAL MASTER